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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/960,756	09/21/2001	Keith Branden Eberlein	CM04703H	6318

22917 7590 12/16/2005

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EXAMINER

GESESSE, TILAHUN

ART UNIT PAPER NUMBER

2684

DATE MAILED: 12/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/960,756

Applicant(s)

EBERLEIN ET AL.

Examiner

Tilahun B. Gesesse

Art Unit

2684

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 13-19 is/are rejected.
- 7) ☒ Claim(s) 6-12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This is in response to applicant's amendment and remarks filed September 30, 2005, in which claims 1-19 are pending.

Response to Arguments

2. Applicant's arguments filed 9/30/05 have been fully considered but they are not persuasive.

On page 6, third paragraph of response, applicant seems to admit that the applied prior art teach all limitation of the claim, however, applicant seems to relies on the newly added limitation, that the applied prior art do not teach the received message from the from simulcast station that the first simulcast station has malfunction.

The examiner disagrees with the applicant's argument. Schieve teaches each site uses the same frequency control channel, and transmits a unique site ID from its inherent radio transmitter as part of the OSW to prevent interference from destroying this OSW , transmitters at sites with coverage area overlapping that of the transmitting site are shutdown while the site ID is transmitted (see column 2, lines 61-column 3, line 13).

Applicant's arguments filed 9/30/05 have been fully considered but they are not persuasive.

(The USPTO uses a different standard for construing claims than that used by district courts; during examination the USPTO must give claims their broadest reasonable interpretation.). This means that the words of the claim must be given

their plain meaning unless applicant has provided a clear definition in the specification. In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989) (discussed below); Chef America, Inc. v. Lamb-Weston, Inc., 358 F.3d 1371, 1372, 69 USPQ2d 1857 (Fed. Cir. 2004).

Applicant's arguments filed 9/30/05 have been fully considered but they are not persuasive.

Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

Applicant's arguments filed 9/30/05 have been fully considered but they are not persuasive.

Applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections.

To sum up , in view of the teachings of the applied prior art and applicant's remark in response to the office action , the examiner determined that the amendment to the claims does not over come rejection. Therefore, the rejection is maintained and made final.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-5,13-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schieve et al (US patent No. 5,263,177).

Claim 1, Schieve discloses a communication system (figure 1, users 121 and 125 are within the overlap area of base stations coverage area of 111,113,115,117), at least a first and second simulcast station at a first remote site (121, 125, and flow chart 509 No, of figure 5 queue channel for later assignment and (513, and see column 2, liens 30-60). Schieve discloses detecting unavailability of the first simulcast station for communicating on a first communication resource (flow chart of figure 5, 509 and 513 and column 4, liens 5-28 and figure 5). Schieve discloses determining if the second simulcast station is available for supporting simulcast transmissions on the first communication resource, (see column 2, lien 58-60, it is readily seen that the first vehicle 121 does not experience distortion from the second site 103) and if the second simulcast station is available, assigning the second simulcast station to communicate on the first communication resource(column 4 lines 29-39 and figure 6).

Schieve does not teach malfunction. However, Schieve suggests that vehicle 121 at the overlap region of coverages 111 and 113, and the vehicle experience distortion from site 101, while does not experience distortion from site 103, which

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means site 101 is unavailable (see figure 1 and column 2, lines 30-60 and see column 2, lines 61-column 3, line 13). Therefore, it would have been obvious to an artisan of ordinary skill in the art at the time of the invention was made to utilize the second site as a back up over the overlap region when ever, the first site fails or shut down and the controller does not receive the site ID.

Claim 2, Schieve discloses communicating, by the second simulcast station, simulcast messages on the first communication resource (abstract).

Claim 3, Schieve discloses determining and assigning are performed by a simulcast site controller (column 3, line 42-column 4, lines 39).

Claim 4, Schieve discloses detecting, is accomplished by the simulcast site controller failing to receive a response to a message sent to the first simulcast station (column 3, lines 14-41 and figure 2). To illustrate, when a remote sends it ID for registration base sites with a significant distance, gets the ISW at too low threshold, therefore, this is what the examiner considered a message failed to be received by simulcast site.

Claim 5, Schieve discloses a comparator adapted for sending data to be communicated over the simulcast channel to one or more of the simulcast stations along with a timestamp specifying when the data will be transmitted (column 3, lines 23-41). Claim 13, Schieve discloses the unavailability of the first simulcast station is due to a malfunction of the first simulcast station (station out of the coverage is considered as a malfunction, (column 4, lines 47-51).

Claims 14-17, Schieve discloses a wireless communication system (figure 1) employing simulcast communication, a method for initiating simulcast communication in a simulcast site (figure 1A), the simulcast site, a plurality of remote sites ((101, 103, 105, 107), determining availability of a plurality of simulcast stations located at the plurality of remote sites (abstract, distortion occurs because the signals are not completely time and frequency aliened when they reach the remote units) assigning, by a simulcast site controller (109), members of a first simulcast channel, the members comprising respective first-available simulcast stations at each of the remote sites (flow chart of figure 5, 509 and 513 and column 4, lines 5-28 and figure 5), and performing simulcast communication using the first simulcast channel (column 4 lines 5-28 and figure 5).

Schieve does not teach malfunction. However, Schieve suggests that vehicle 121 at the overlap region of coverages 111 and 113, and the vehicle experience distortion from site 101, while does not experience distortion from site 103, which means site 101 is unavailable (see figure 1 and column 2, lines 30-60 and see column 2, lines 61-column 3, line 13). Therefore, it would have been obvious to an artisan of ordinary skill in the art at the time of the invention was made to utilize the second site as a back up over the overlap region when ever, the first site fails or shut down and the controller does not receive the site ID.

Claims 18-19, Schieve discloses a communication system (figure 1) at least a first and second simulcast station at a first remote site (101, 105, 107 sites in

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communication with remotes 121 and 125 over the overlap regions, column 2, line 22-column 3, line 13). Schieve discloses detecting unavailability of the first simulcast station for communicating on a first communication resource (flow chart of figure 5, 509 and 513 and column 4, lines 5-28 and figure 5). Schieve discloses determining if the second simulcast station is available for supporting simulcast transmissions on the first communication resource, (flow chart of figure 5, 509 and 513 and column 4, lines 5-28 and figure 5) and if the second simulcast station is available, assigning the second simulcast station to communicate on the first communication resource (column 4 lines 29-39 and figure 6).

Schieve does not teach malfunction. However, Schieve suggests that vehicle 121 at the overlap region of coverages 111 and 113, and the vehicle experience distortion from site 101, while does not experience distortion from site 103, which means site 101 is unavailable (see figure 1 and column 2, lines 30-60 and see column 2, lines 61-column 3, line 13). Therefore, it would have been obvious to an artisan of ordinary skill in the art at the time of the invention was made to utilize the second site as a back up over the overlap region when ever, the first site fails or shut down and the controller does not receive the site ID.

Allowable Subject Matter

5. Claims 6-12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tilahun B Gesesse whose telephone number is 571-272-7879. The examiner can normally be reached on flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nay Maung can be reached on 571-272-7882.

The Central FAX Number will change to 571-273-8300. This new Central FAX Number is the result of relocating the Central FAX server to the Office's Alexandria, Virginia campus.

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12/9/05

TILAHUN GESESSE
PRIMARY EXAMINER